

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1056 of 1999

in

SPECIAL CIVIL APPLICATION No 8650 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR C.K.THAKKAR and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

YUNUSBHAI HASANBHAI GHANCHI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YN RAVANI for Appellant

NOTICE SERVED BY DS for Respondent No. 1, 2, 3

CORAM : ACTG.CHIEF JUSTICE MR C.K.THAKKAR and
MR.JUSTICE A.L.DAVE

Date of decision: 15/09/1999

ORAL JUDGEMENT

1. This appeal is filed against dismissal of Special Civil Application No.8650 of 1998 passed by the learned

Single Judge on July 21, 1999.

2. The appellant was the original petitioner. He was detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act") by an order passed by the District Magistrate, Bhavnagar ("detaining authority" for short) on September 22, 1998.

3. It was alleged in the grounds of detention that the appellant was a "dangerous person" and the detaining authority was satisfied with respect to him that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain him and, accordingly, the order of detention was passed.

4. Various grounds were raised by the learned counsel for the appellant-petitioner when the matter was placed for hearing before the learned Single Judge. It was contended that there was delay in passing the order of detention, inasmuch as, though the offences which were registered and relied upon by the detaining authority for the purpose of exercising the power were dated July 24, 1998 and August 15, 1998 respectively, an order of detention was passed as late as on September 22, 1998. There was, therefore, no causal connection and live link between the offences registered against the detenu and the satisfaction of the detaining authority to detain him for the purpose of maintenance of public order. It was also contended that as soon as the appellant was arrested in connection with the above offences, he was enlarged on bail by a competent Court. Not only that, no proceedings for cancellation of bail were taken, but it was not even stated in the grounds of detention that there was no likelihood to get the bail cancelled and, thus, before exercising drastic power of detaining him under preventive detention, no action was taken, which was illegal and the subjective satisfaction was vitiated. It was further contended that though five statements were recorded, only three were verified by the detaining authority. Two were not verified and yet the power was exercised under sub-section (2) of Section 9 and thereby the subjective satisfaction was vitiated. It was further contended that a representation was made and it was not expeditiously disposed of and, thereby also, the order of preventive detention was vitiated.

5. The learned Single Judge after hearing the learned counsel for the appellant-petitioner and distinguishing various decisions cited at the Bar, held

that there was no delay in passing the impugned order of detention; that out of five statements three were verified and the said fact was reflected on record; and though the detenu was on bail, he continued with his illegal and anti-social activities and, hence, the detaining authority was satisfied, with a view to preventing him from continuing with such activities, his detention was necessary. According to the learned Single Judge, there was no delay in disposing of representation and that ground also, therefore, was not available to the detenu. Accordingly, the petition was dismissed.

6. On 3rd August, 1999, a Division Bench admitted Letters Patent Appeal and fixed it for final hearing on 17th August, 1999. Today the matter is called out for hearing.

7. Though various contentions have been raised before us at the time of hearing by the learned counsel for the appellant-detenu, in our opinion, it is not necessary to enter into all the questions in view of the fact that the appeal can be allowed on a short ground.

8. As is clear from the grounds of detention, it is not stated whether any action was taken for cancellation of bail which was granted by a competent Court and that in spite of such an action, the detenu continued his anti-social activities. A similar question arose before a Division Bench of this Court in Zubedabibi Rasidkhan Pathan v. State of Gujarat & Ors., 1995 36(2) GLR 1134. There also the detenu was enlarged on bail and there was non-consideration on the part of the detaining authority as to whether any action was taken to get the bail cancelled. The Division Bench observed in paragraph 5 as under :-

"5. Looking to this interpretation which is the only permissible interpretation of the relevant provisions contained in Section 437(5) of the Code of Criminal Procedure, 1973, we must say that, there has been a clear non-application of mind on the part of the authority passing the order qua the statutory requirement or the existing legal process. Any how the matter does not rest here because, the learned counsel for the petitioner has been able to demonstrate a further aspect of a glaring non-application of mind on the part of the authority passing the order. Elaborating his contention, the learned counsel urges that, the subjective satisfaction recorded by the detaining authority is that, the

detenu has been released in all the criminal cases shown under Annexure-1 and Annexure-2 under certain terms and conditions, and that, as no term or condition has been violated, there can be no resort to the provisions contained under Section 437(5) of the Code of Criminal Procedure; but when the conditions of bail orders are perused, it is clear that in none of the bail orders, any condition has been imposed. Naturally, therefore, there could not be any eventuality under which the detenu would be able to commit the breach of the terms and conditions to be imposed by the competent Court while admitting him to bail. Therefore, it appears very clearly to us that, there was a further non-application of mind on the part of the authority passing the orders qua the factual situation also. If there would be the necessary application of mind on the part of the authority passing the order such subjective satisfaction could not have been recorded. We are, therefore, satisfied that, there has not been a non-application of mind qua the legal position but qua the factual aspect of the case also. This, in our view is sufficient to vitiate the orders of detention. It could also have been urged that, if the detenu was found to be indulging in the very same activity, the competent Court could have been approached with the prayer for the cancellation of the bail under Section 437(5) of the Code because as amplified above the powers of the Court for cancellation of the bail are not limited to those cases only in which the conditions have been imposed and the persons released on bail is guilty of violating the terms and conditions of bail. In view of this position, we are inclined to accept the contention coming from the learned Counsel Mr. Sanjanwala for the petitioner."

9. In the instant case, the fact regarding the detenu on bail was very much in the mind of the detaining authority, which is reflected in the grounds of detention. But he has not considered that the bail was likely to be continued in spite of the action being taken for cancellation of bail or that the said fact is reflected in the order of detention or in the grounds of detention.

10. In view of the fact that there is non-application of mind on the part of the detaining authority about this

vital aspect, the subjective satisfaction can be said to be vitiated. Only on that ground, the Letters Patent Appeal deserves to be allowed and is, accordingly, allowed. The appellant-detenu is ordered to be released forthwith, if not required in any other case. Direct service permitted.

[C.K. THAKKAR, ACTG. C.J.]

[A.L. DAVE, J.]

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